

MINUTES

MONTANA SENATE
56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON PUBLIC HEALTH, WELFARE AND SAFETY

Call to Order: By **ACTING CHAIRMAN JOHN C. BOHLINGER**, on
March 17, 1999 at 3:20 P.M., in Room 410 Capitol.

ROLL CALL

Members Present:

Sen. Fred Thomas, Vice Chairman (R)
Sen. Sue Bartlett (D)
Sen. Dale Berry (R)
Sen. John C. Bohlinger (R)
Sen. Chris Christiaens (D)
Sen. Bob DePratu (R)
Sen. Dorothy Eck (D)
Sen. Eve Franklin (D)
Sen. Duane Grimes (R)
Sen. Don Hargrove (R)

Members Excused: Sen. Al Bishop, Chairman (R)

Members Absent: None.

Staff Present: Susan Fox, Legislative Branch
Martha McGee, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted:
Executive Action: HB 111, HB 266

ACTING CHAIRMAN JOHN C. BOHLINGER said the Committee was going to
take up **SB 322** today. It has been in the **Subcommittee** for
several weeks. However, the **Subcommittee** has not been able to
finish their work, and they will not take action on **SB 322** this
afternoon. They will take Executive Action on Friday,
March 19, 1999.

ACTING CHAIRMAN BOHLINGER explained that **CHAIRMAN AL BISHOP** was not feeling well, and had asked him to proceed as **ACTING CHAIRMAN**.

EXECUTIVE ACTION ON HB 111

Motion: **SEN. DUANE GRIMES** moved that **HB 111 BE AMENDED - AMENDMENT #HB011103.asf- EXHIBIT (phs60a01)**

Discussion:

ACTING CHAIRMAN BOHLINGER said he understood there were 4 amendments to **HB 111**, and asked **SEN. GRIMES** to explain his amendments.

SEN. GRIMES said this has been a protracted process. One of his concerns at the hearing was with the circular definition they had become dependent on, how difficult it was to read, and understand. When he looked at the definitions from other states, in the NCSL (National Conference of State Legislatures) handbook, there was nothing that distinctive. Most of his amendments came right out the NCSL handbook.

SEN. GRIMES stated they started working and took the Florida definition for genetic information and inserted it. In the Florida definition they had included genetic testing. They broke that portion of the Florida law out.

What they see in **Amendment #HB011103. asf**, is basically the inserting of some common definitions that are used in other states. Then everybody know what the definition means, and everybody's not worrying about basically what the other side of the issue is doing. They injected a little bit of commonality, and more readability in the law. Everybody has looked this over, all the interested parties. At least they have reduced words. At best, they have improved two definitions dramatically. The definitions of genetic information and genetic testing. They will notice they had some geneticists here, who proposed some language from Canada. They had some dispute about the language, or questions about it. This language is even understandable to them. He's not sure they like this definition over theirs, but it certainly was better. He probably should have had this put into a Gray Bill, however, it is universally accepted.

There is a couple of other issues that they need to talk about. This seems to tighten the language. He understands that

REP. MARY ANNE GUGGENHEIM is okay with this as well, as is the Insurance Commissioner's Office, and the insurance representatives.

Questions from the Committee Members and Responses:

SEN. FRED THOMAS said he wanted to thank **SEN. DUANE GRIMES** for his hard work, delving into this bill deeply, and working with the other parties. He wants to endorse **SEN. GRIMES'S** recommended amendments.

SEN. EVE FRANKLIN said she would like to echo the same and she has a question on the 4th amendment. This may be more of a policy issue, the term does not include "routine physical examination, or a chemical, blood, or urine analysis, unless conducted or analyzed purposefully or knowingly to obtain genetic information, or a family history." **SEN. FRANKLIN** said this is kind of obscure, but the issue that the geneticist from Shodair Hospital, where serendipitously, sometimes they find something. Maybe it wasn't knowingly and purposefully they weren't testing for it, but then it becomes an issue, once it is discovered. Where are they with policy on this. If the Committee can't speak to it, maybe, someone else could.

SEN. GRIMES said they might want to have **Russell Hill** address that question. He said that may be a better question on another amendment that the Insurance Commissioner would like where they are talking about presumption under genetic trait that he doesn't plan to offer.

SEN. FRANKLIN said she wants clarification. Maybe there is somebody that could speak to this in terms of what is their intent. What was the Sponsor's intent. She was left with a little lack of clarity. Could **Mona Jamison**, or **Russell Hill** speak to that.

Mr. Russell Hill, Representing the Auditor's Office, said the concept of the whole bill has been, let insurance companies ask about family history, let them explore, what ever that family history may raise red flags, but the threshold is if a genetic trait has not manifested itself they can't discriminate. If its manifested itself, they can. **SEN. GRIMES** and himself, have talked about the word "presumed." It is very key to this whole concept He thinks **SEN. GRIMES** is right, that replacement of family history here depends on whether you put "presumed" in the bill or not. He'd be glad to wait until the Committee wants to talk about this or do it right now.

SEN. FRANKLIN asked if that was a separate set of amendments, or is it on the one they are working on right now.

SEN. GRIMES answered, it is a separate issue they will end up discussing, but he has not had that amendment drafted. It is pretty simple.

SEN. FRANKLIN said so she really understands what they are really intending to do, if an individual is not symptomatic, they are pre-symptomatic, and serendipitously a physician finds that odd football-shaped cell that the geneticist was talking about, they're spherical cells which is some obscure genetic illness, they would not discriminate. They could not preclude covering treatment if they then established you've got this predisposition to this odd genetic disease, if you are pre-symptomatic, but, if they had symptoms and they are already manifesting the disease, then they could.

SEN. GRIMES answered, yes. The insurer could request, if they saw that genetic composition by test, to see if it has manifested or not. But if it is not manifested, then they could not discriminate by raising rates or excluding coverage.

Vote: **SEN. GRIMES'S** motion that to **AMEND HB 111 BY ADOPTING AMENDMENT #HB011103.asf**. The motion carried unanimously - 11-0.

Motion: **SEN. GRIMES** moved that **HB 111 BE AMENDED - AMENDMENT #HB011104.asf**. **EXHIBIT** (ph s60a02)

SEN. GRIMES explained that what this does on Section 7 of the bill, bottom of Page 5, it clarifies, it probably is already in the bill, but they had some requests to clarify. Seeking genetic information for non-therapeutic purposes did not exclude using genetic information for research purposes. Basically what they have done on the last page of the bill where it said, may not seek genetic information about an individual for a purpose that 1, 2 and now 3, "unrelated to research."

SEN. GRIMES said he had one more thing on this amendment that he wants to explore with the Committee. They may want to discuss this portion of it first as it stands.

ACTING CHAIRMAN BOHLINGER asked for questions from the Committee on Amendments to HB 111, Amendments #HB 011104. asf.

Questions from the Committee Members and Responses:

SEN. SUE BARTLETT asked **SEN. GRIMES**, if the Committee was to add this, it makes good sense in terms of a health service corporation, perhaps health maintenance. If an insurer was somehow conducting research, and got genetic information on an individual through that, could they then use that information to deny coverage or increase premiums.

SEN. GRIMES answered he didn't believe the language allowed them to do that. It came in late today. He is going to ask **Russell Hill** to answer.

Russell Hill, Representing the State Auditor's Office, said this question was a good concern, but he would like to defer **SEN. BARTLETT'S** question to **Dennis Iverson**.

Dennis Iverson, Representing Firemen Insurance, said they don't specifically have a problem with the bill now. But the Representative from Glaxo is concerned that information for research purposes may be impeded, and that was the purpose for the amendment. If the Committee has specific question, he was sure that **Kathy Kavanagh** would be happy to answer them.

SEN. GRIMES said he will try to answer **SEN. BARTLETT'S** question. Even if someone is seeking genetic information for non-therapeutic purposes, even if it is for research purposes, as soon as that encroached on how they might use that purposely and knowingly, Section 6, in the bill would apply. That is his understanding. He didn't see any problem when the amendment was brought to him today.

Susan Fox, Legislative Researcher, said there was a suggestion that they put in a clause they used the term "anonymized." She is not familiar with that term. Perhaps by using that term and talking about "anonymous research" or say "research for which the individual remains anonymous", something to that effect, that would still accomplish the research goal, and keep the person's identification secure.

SEN. GRIMES stated he forgot to put that language in.

SEN. GRIMES moved to **AMEND** his **AMENDMENT #HB011104.asf, item #2**, by inserting language that says, "unrelated to anonymized research."

ACTING CHAIRMAN BOHLINGER restated for the Committee members, the motion was to amend the amendment #2, Page 6, line 3. The language would read, "unrelated to anonymized research"

Discussion:

SEN. FRANKLIN said for grammar, they could put it in one sentence. The sentence could read, "unrelated to research, in which subjects are anonymous, not personal identifiable."

ACTING CHAIRMAN BOHLINGER asked the Committee if they had a grasp for the language, and if it was clear.

SEN. GRIMES said he could move that as a conceptual amendment, that it is supposed to be "anonymous."

SEN. FRANKLIN said it would read, "unrelated to research in which subjects are not personally identifiable."

ACTING CHAIRMAN BOHLINGER asked **Susan Fox, Legislative Researcher** for the benefit of the Committee if she would read the amendment as they now have constructed the sentence.

Susan Fox said, subsection 3 would read, "unrelated to research in which subjects are not personally identifiable."

ACTING CHAIRMAN BOHLINGER said he sees heads nodding in agreement, and asked the Committee if that was agreeable.

ACTING CHAIRMAN BOHLINGER asked if there was any further discussion on **AMENDMENT #HB011104.asf**.

SEN. FRANKLIN asked if the Committee would give the drafter discretion, if she could figure out to do the amendment without double negatives.

Susan Fox responded that is a problem with this whole section, it is a double negative. It is difficult grammatically because they started on a double negative.

Vote The motion carried unanimously -10-0.

SEN. GRIMES said this is where they needed to utilize a little judgement as a Committee. It has to do with basically the section on discrimination, however, he may amend section 7 again. The insurers are still, even though they have clarified the language and they have made it clear, there is still some concern that this will prevent them from using family history.

He gave them a brief background and he will try to be succinct. What it came down to, what this section does, is prevent an insurer from solely on the basis of family history, for raising rates or refusing coverage. In other words, there has to be a manifestation, before they would do anything of those things. Then they are excluded from the bill. He asked all the insurers specifically, if there was a case, or cases where they would need to discriminate, if absent solely on genetic information absent of a manifestation, really what happened genetically, genetically it's a predictor, but it does not absolutely show for certain that you are going to get the particular disease. An example, like in Huntington's disease, which he doesn't know what that is, but apparently it is a 50% probability. The insurers agree, across the board that they would not discriminate based on that unless the manifestation were there. For that reason, the section is not that problematic.

However, the point he wants to make is - preliminary studies suggest that genetic discrimination may not be near as prevalent, as has been suggested. So on the one hand you have the fact that genetic discrimination has not been very prevalent at all, so really what this bill is something for the future. They kind of see it coming so they are trying to prevent something in the future.

NCSL is careful to suggest to legislators that legislatures should move slowly, and cautiously to balance the interest at stake, as the science and clinically benefits of genetics become more prevalent and complex. With that in mind, trying to not go for the whole enchilada and move slowly in this area, he has been trying to strike some balance, because the insurers are still somewhat concerned that this discrimination section could be used down the road to prevent them from using family history in a way is genetics. Just to see if there is an evidence of something there that they want to test for. The genetic predisposition to something they may want to test for. They wouldn't do that unless, probably the applicant had, that information themselves as well. As a matter of fact, almost nobody does that.

The problem is how - he has read this over and he has talked to all sides about this - there is some level of concern among the insurers. One more thing, "insurance discrimination is highly complex." Claims of discrimination may require proof that denial of the benefits was based solely on genetic information, which may difficult to establish. What the insurers were suggesting here is that the Committee put the word sole in here, like on Line 12, under discrimination based on genetic traits that you'd put, "many not solely on the basis of a person's genetic traits, purposely failed and refused to accept", but that may be difficult to establish.

He thinks if they put "solely" in, they may want to pull the genetic trait section out, because it really would be hard to prove. They just came up with an idea here. He has been looking for one for days. They just ended up with one now. He would like the Committee to explore.

He told the Committee members he was sorry, but this is really important and complex.

ACTING CHAIRMAN BOHLINGER asked **SEN. GRIMES** if he was ready to circulate his 3rd amendment.

SEN. GRIMES clarified that he didn't have a 3rd amendment.

SEN. GRIMES said to look at the last amendment they worked on. After the language "unrelated to research", it has been suggested that they solve this difficulty, of whether or not they could really use family history for insurance utilization purposes, by putting in a Subsection #4 saying "unrelated to utilization review." So it could be used for non-therapeutic purposes, if it was unrelated to utilization review. Frankly he hasn't had time to digest that thoroughly. They may want one or more of the insurers to explain it to them, **John Metropoulos** or **Paige Dringman**, or someone else, that concept and see if that ensures that they are not going to be checked for using family history. As **REP. GUGGENHEIM** said, she wants to allow them to function just the way they function now. That is what they are trying to do, make sure that happens.

ACTING CHAIRMAN BOHLINGER asked the Committee's approval if would it be agreeable to have one of the outside experts visit with them about this question of unrelated to utilization review and how it might affect them.

{Tape : 1; Side : A; Approx. Time Counter : 1 - 29}

Questions from the Committee Members and Responses:

Paige C. Dringman, Representing the Health Insurance Association of America, said that one concern that her company has had, there is a question, is utilization review therapeutic, can it be considered medicine in any way. She didn't know. The company that she represents was concerned that Section 7 was going to prohibit using genetic information, including family history for utilization review, which in fact in some cases they do use it. Third party administrator takes a look at the areas.

ACTING CHAIRMAN BOHLINGER asked **Ms. Dringman** to help them with a definition. The Committee is having some difficulty understanding just what utilization review is.

Page C. Dringman, answered it is her understanding and it may not be entirely accurate, but you have a third party administrator take a look at what the health carrier did, what the provider did, and say if that was appropriate.

SEN. FRANKLIN commented, it is basically looking at the services, provided and was it appropriate to meet the therapeutic conditions and looking at the resources of insurance company. It is twofold. It is appropriate resource management in the context of therapeutics.

Paige C. Dringman, stated it also looks at setting reserves. So that is the question, is it therapeutic or isn't it therapeutic.

SEN. GRIMES asked if they could have **Greg Van Horssen**, address this question as well.

SEN. THOMAS said while waiting for **Greg Van Horssen** to come up to the podium he has a question for **SEN. GRIMES** if he was comfortable with the term utilization review being undefined in this proposal.

SEN. GRIMES stated since this is probably not going to be used extensively. They want to get this bill in the law books to get it working. This won't detract from the primary definitions in the bill. Maybe the Insurance Commissioner would be a better person to ask. He is going on what the insurers were recommending to him before the hearing. Maybe **Greg Van Horssen** would have some comments for the Committee.

Greg Van Horssen, State Farm Insurance Company, said that everybody in the room knows that he is not the big dog in the health insurance game here. For the purpose of answering their question about utilization review, he believes it is more or less a term of art, that refers to an insurers review of the care that is being provided under their coverages, to make sure that the care is not out of line, too expensive, too prolonged, etc. That in his understanding, **SEN. GRIMES** is what utilization review refers to.

SEN. CHRIS CHRISTIAENS said because of that, he doesn't know that it belongs in the bill. The other part is a question he has for **SEN. GRIMES**. Because you are looking at information from NCSL, there must be some part in there that talks about utilization

review, and pertaining to genetic tests, or genetic traits. He would rather maybe leave it out at this point, unless they can immediately find it and fix it.

SEN. GRIMES said he had another proposal they could move on to if they don't use this language. **Russell Hill** has been working very hard on this, perhaps he could give them their perspective from the Insurance Commissioner's Office.

Russell Hill, Chief Legal Counsel, Auditor's Office, said this amendment causes him no problem, if it is very clear. It needs to be clearer in the language of the amendment. The utilization review occurs after an application, after underwriting, after rating the policy. If it's a post contract type of activity, he doesn't think they are trying to breach that. He has no problem. His concern is because of the confusion here in the Committee, and utilization review is a fairly elastic term, that they make it more clear. The utilization review occurs after somebody with one of these conditions has gotten their policy without discrimination, and doesn't come back and buy them.

ACTING CHAIRMAN BOHLINGER said **Susan Fox, Legislative Researcher**, has discovered they have within existing law a Section of law that describes "utilization review", and would she please read that Section and share her overview.

Susan Fox said she thought this will illustrate **Mr. Hill's** point very well. It is Chapter 32, the whole Chapter is on health utilization review. The definition means, "a system for review of health care services for a patient to determine the necessity or appropriateness of services, whether that review is prospective, concurrent, or retrospective." The prospective part is what would be problematic with **Mr. Hill's** analysis. Then it says, "when the review will be utilized directly or indirectly in order to determine whether the healthcare service will be paid, covered, or provided." She said in the provided part, she thought they were verge on "therapeutic decisions." In the statutory construction, if you don't define a term, they can go find a term elsewhere in code to use it to help define it. She would offer them that, it is in the Insurance Code, it is a different Chapter, it is not where this bill is being codified, but it could cause some confusion at a later date.

SEN. FRANKLIN asked what Title of law this was in.

Susan Fox said it was Title 33, Chapter 32, of the Montana Codes Annotated.

ACTING CHAIRMAN BOHLINGER asked the Committee if they were ready to move forward with this conceptual amendment that **SEN. GRIMES** has described, to deal with the question of "utilization review".

SEN. GRIMES said he likes the concept and it seems like they are getting so close to something that works for everybody. He is still concerned. He hasn't spent too much time on this function. If they could take a few minutes and some comments from some folks. He is looking for help here.

SEN. CHRISTIAENS suggested that they not add the amendment now, and as the bill goes through the process, it is going to have to go back to the House of Representatives. There could be some understanding that portions of it be rejected, or they have time to work on the amendment, if they want to do it. Offer it maybe on the Floor. Taking some time to put it together. Rather than do it now. He didn't know how comfortable they felt about that.

SEN. GRIMES said that would be fine. They could do that and then he could offer the amendment on the Floor. That would give them a few days for everybody to make sure they are comfortable with it. What he may do is move, in order to put a stake in the sand, or what ever analogy you use, is he may move a different amendment to talk about genetic traits. That will force them to come back to the issue, then they could pull that language out, as they move this amendment in, if it will accomplish the ends. They have two extremes that they are worried about on how this will apply. He really doesn't know, and he doesn't know if anybody knows, because they haven't gotten there yet. However, he doesn't want to error, he just can't find any middle ground.

SEN. CHRISTIAENS said if it can be done in Conference Committee, and Free Conference Committee. That could buy some time to be able to bring people together.

ACTING CHAIRMAN BOHLINGER said **SEN. THOMAS** was just bubbling over with new insight.

SEN. THOMAS said to **SEN. CHRISTIAENS** in following up on his last point, if they want this amendment to be a consideration of a Conference Committee, they need to put it in the bill, don't they.

SEN. CHRISTIAENS answered he was right.

SEN. THOMAS remarked it seemed to him that **Mr. Russell Hill, of Insurance Commissioner's Office**, that this proposed amendment is okay. **SEN. THOMAS** asked if he could ask **Russell Hill** a question.

SEN. THOMAS asked, **Russell Hill**, that he had indicated that the utilization review as a term is understood. Is he in favor or disfavor of putting this amendment in the bill?

Russell Hill responded, he guessed if the amendment was clarified to say something like that, "unrelated to utilization review which does not impact issuance or pricing of insurance". That would give him much more comfort. He thinks it is a problem with just those four words, "unrelated to utilization review."

SEN. GRIMES asked if it would work to say it does not, referring back to Section 6, that it does not conflict with Section 6. Would that accomplish the same end.

SEN. FRANKLIN said while, **Russell Hill** is looking at that, she wanted to ask another question.

ACTING CHAIRMAN BOHLINGER said while **Mr. Russell Hill** was formulating his response, would **Mona Jamison**, please answer.

Mona Jamison, Representing Shodair Hospital, Helena, said she would tell what gets her nervous about the amendment on utilization review. They are sitting there, wondering what the impact is, what does it mean. Its in this title, how does it affect integration with the bill they are looking at. To her that is a drafting red flag, in an area, that is new, its cutting edge. Months have been spent on the bill. **SEN. GRIMES** has spent a ton of time working on the other amendments visiting with folks. This kind of drafting gets her nervous, she could possibly love it in the end, but she thinks it is very injudicious, when no one knows. They are sitting here and no knows what the impact will be. To put it in a bill that's in a new area. That's the only point she wants to make.

SEN. GRIMES said he withdraws his amendment. What he will do for the purpose of making sure this becomes an issue gets discussed later is to make a motion.

Motion: **SEN. GRIMES** moved the word "solely" be included on Line 12, right before, on the basis, and on Page 5 in Section 6, he moved that they insert the word "solely" right before, on the basis of a persons genetic trait. So it would be "solely". Then down on Line 26, insert the word "solely", again in the same place, right before, on the basis of a persons genetic traits.

SEN. GRIMES said, members of the Committee, the word "solely" is pretty exclusive, and he understands that. What he wants to do is to make sure in the process, they have the right balance, and get the bill back to **REP. GUGGENHEIM'S** court, so she can weigh this

out. They are still going to be able to use family history appropriately, based on this Section.

This is a clearer and better understood amendment.

ACTING CHAIRMAN BOHLINGER asked for comments on **SEN. GRIMES'S** "solely" amendment.

Questions from the Committee Members and Responses:

SEN. FRANKLIN asked if **Claudia Clifford** could answer a question. The addition of the word "solely", she is just trying to understand the impact, what this would really mean in terms of implementation. Has she had a chance to review this.

Claudia Clifford, Insurance Specialist, Auditor's Office, said this is an issue that is dealt with frequently in insurance statutes. What happens if you put the "solely" in, it will allow a company to discriminate based on genetic traits, because all they have to have is one other reason. That is also complicating their underwriting, or relevant to their underwriting, and then their underwriting is not bases "solely" on that reason. So let's say that you have a genetic trait and you have some other reasons why they want to reject you. They can reject you and discriminate against you because of your genetic trait, because they have another reason. This will only protect people who - the only thing that was relevant was a genetic trait, was otherwise, probably a perfectly healthy individual.

SEN. FRANKLIN said she thinks what **SEN. GRIMES** is trying to do is try to get a middle ground, but actually this kind of practically doesn't do it.

Claudia Clifford responded, from their perspective it guts the bill.

ACTING CHAIRMAN BOHLINGER asked further comments or questions concerning **SEN. GRIMES'S** conceptual amendment using the word "solely."

Closing on Senator Grimes's Amendment:

SEN. GRIMES said, to say this amendment, "guts the bill", you could say that. He said it makes it more difficult to establish, unquestionable. He talked to **Susan Fox, Legislative Researcher** about other words that would work, so they strike middle ground. He explained his intention here is to force this issue and make sure in this very important legislation that they set up for the

future, that they don't go too far. While he admits this language does seem to make it difficult to establish, this is an important enough issue for the Committee to allow it to be considered in the future. He doesn't assume that this will necessarily stay in the bill, but it forces them to focus on the balance they are trying to strike. So they move slowly and cautiously into this new area. It has already been mentioned that this is the cutting edge area, and he agrees. That is why he is glad this bill will be out of the Senate soon. He closed

SEN. FRANKLIN said on the issue of balance, she believes this bill is the balance. The bill itself is pretty balanced, because you can't tell somebody they can't be covered if they have a genetic trait. But you can't tell them if there are symptoms based on a genetic trait. Actually the bill itself is the middle ground. For that reason she is going to speak against the amendment.

SEN. THOMAS said he appreciates this amendment because it focuses on the issue, focuses right squarely on the issue. That helps him to further his understanding of what they are doing.

{Tape : 1; Side : B; Approx. Time Counter : 0 - 27}

SEN. THOMAS continued, this is not just based on genetics, but other things as well. He didn't think that is the intent of the bill to do that.

SEN. THOMAS said he doesn't think they should adopt the amendment to **SEN. GRIMES**, they should leave it out at this point. It could be considered later. However, at this juncture, they don't need to go forward with it because of the nature it. If they were going to vote against this bill, this would be a good way to do it by adopting the amendment. He appreciates the work **SEN. GRIMES** has brought to them. He brought it squarely to the point of the legislation with this amendment.

SEN. GRIMES asked if he could re-close. He said he liked the purpose of the bill, and he likes what they are doing in the Committee. He feels very very comfortable with the new definitions they have, and other people appreciate them also. There is still some concern over this section and how it may be applied. Because of some medical history, he doesn't want his kids, not to be able to get insurance.

SEN. GRIMES said he also doesn't want anybody discriminated against them because something may show up in that medical history. So its not his intention to gut the bill. His intention is to make sure before this bill leaves the legislature, that he has the same comfort level, or that at least **REP. GUGGENHEIM** can address this

issue, and focus on it squarely. He understands, and knows there is better language than what he has at the present, but he does not know right now what it is.

With that, he stands behind his amendment, and hopes they can support it.

ACTING CHAIRMAN BOHLINGER explained the amendment was on Page 5, Line 12 and Line 26, they will add the word "solely" on the bases of a persons genetic traits.

Vote: The motion failed with **SEN. GRIMES** voting "yes" - 1-9.

ACTING CHAIRMAN BOHLINGER stated they have a further amendment to **HB 111** which was circulated to the Committee members.

Motion: **SEN. DEPRATU** moved that **HB 111 BE AMENDED - AMENDMENT #HB011102.asf. BE ADOPTED.** He moved amendment for Sponsor.

**EXHIBIT (ph
s60a03)**

SEN. BOB DEPRATU explained that he just saw the amendment a couple of minutes ago. Basically it brings more clarity to the bill, and especially when you look at item #6, saying, "This section may not apply to transactions of life, disability income, or long-term care insurance. As they go through part of these related sections, he thinks it does what they planned to have it do.

Questions from the Committee Members and Responses:

SEN. BARTLETT said she had no questions, just a comment, she intends to vote against this amendment. These types of insurance have gone along happily all these many years without the use of genetic testing. The pool of the human population is the same today as it was yesterday, and she just doesn't see any substantive reason to exclude these types of insurance.

SEN. GRIMES said there is a reason that the 30 some states, that have genetic testing laws have excluded all but one, have excluded life insurance and others. That is because it is a little bit different product. When genetic information becomes more and more available to the public, and they find that they are highly predisposed to something, they are going to go purchase that product. All the life underwriters want to do is make sure they have the same information that their clients that come in the doors have. He thinks it is very important to pull this out of the bill. He thought it was already out. He had it XX out on his sheet.

Vote: The motion carried with SEN. BARTLETT AND SEN. FRANKLIN voting "no" - 8-2.

SEN. GRIMES said he will not have an amendment, but with the Committee's indulgence, he would work on that language. He had intended to work on it and didn't. He will see if he can come up with some language, and get with each of them individually before action on the Senate Floor.

SEN. FRANKLIN asked if whether they just wanted to do this in Committee so at least they will understand what the amendment is before it goes on the Floor.

SEN. GRIMES answered, he would try to get it done before its reported out. He'd work on the language tonight. He would be happy to carry this bill on the Floor, since his name is on it.

Motion SEN. GRIMES moved that **HB 111 BE CONCURRED IN AS AMENDED.**

Vote: The motion carried unanimously, with CHAIRMAN BOHLINGER including SEN. BISHOP'S "yes", vote by proxy, for the record -11-0.

EXECUTIVE ACTION ON HB 266

ACTING CHAIRMAN BOHLINGER said they will take up consideration of **HB 266**, and **SEN. CHRISTIAENS** has an amendment which is being circulated.

Motion SEN. CHRISTIAENS moved **HB 266 BE AMENDED -AMENDMENT #HB026601.asf.** **EXHIBIT** (ph s60a04)

SEN. CHRISTIAENS explained the amendment. He believed something was overlooked, when the bill was being drafted. It applies to HMO's (Health Maintenance Organizations). He wanted to make sure this language was in the bill, and this is what the amendment does.

ACTING CHAIRMAN BOHLINGER said he would like to have their **Researcher, Susan Fox**, explain this **AMENDMENT #HB026601.asf.**

Informational Testimony:

Susan Fox, said the substance of the amendment is Section 3 of the bill, Section 33-31-102, MCA, is the definition section for HMO's. If they look at 2 (j), they will see that it had "treatment for PKU" in the bill and it defined the term treatment.

That treatment definition was the same as that existed in the section on coverage for PKU's. But because it has been expanded in the medical food area, that was discussed under coverage, not necessarily the definition of the treatment. She changed the word "PKU" to the "inborn errors of metabolism." Instead of reiterating the definition of treatment and medical food, she just tied it directly to those definitions that they already found in Section 1, of the bill.

The next section that is being inserted is Section 4. Section 33-31-111, MCA, provides the laundry list of statutes that apply. She is not clear why it wasn't in there before, but this is the place where the HMO's expect to look and find out what other provisions of Title 33 will apply to them. It is a fairly simple, though it looks long.

Questions from the Committee Members and Responses:

SEN. THOMAS stated that it adds a new section of law.

Vote: The motion to adopt **AMENDMENT #HB026601.asf** carried 10-0.

Motion/Vote: **SEN. CHRISTIAENS** moved that **HB 266 BE CONCURRED IN AS AMENDED**. The motion carried unanimously, with **SEN. BISHOP** voting "yes," by proxy - 11-0.

SEN. THOMAS said he wanted to thank **SEN. GRIMES** again for working so hard on **HB 111**. All the Committee members agreed and gave **SEN. GRIMES** a grand round of applause.

SEN. THOMAS told the members of the Committee that they may meet again, on Friday, March 17, 1999, at **CHAIRMAN BISHOP'S** call.

SEN. THOMAS reported the issue is **SB 322, SEN. WATERMAN'S** bill that is in **Subcommittee**, the hospital conversion bill. The **Subcommittee** is working on that. The **Subcommittee** is going to meet tomorrow at 11:00 a.m. in Room 405. It is their intention to be done with that bill tomorrow at noon. **SEN. CHRISTIANENS, SEN. GRIMES**, including himself (**SEN. THOMAS**). They will report

to the PHS Committee on Friday, March 19, 1999, if they can. That is their plan.

ACTING CHAIRMAN BOHLINGER stated that **SEN. CHRISTIAENS** will carry **HB 266** on the Senate Floor.

{Tape : 2; Side : A; Approx. Time Counter : 0 - 13}

ADJOURNMENT

Adjournment: 4:20 P.M.

SEN. John C. Bohlinger,
Acting Chairman

MARTHA MCGEE, Secretary

AB/MM

EXHIBIT (phs60aad)